

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:

J.C. PENNEY COMPANY, INC.*et al.*,¹

Debtors.

Chapter 11

Case No. 20-20182

(Jointly Administered)

**Objection Deadline: November 23, 2020 at 12:00
(CT)²**

**LIMITED OBJECTION OF BROOKFIELD
PROPERTIES RETAIL, INC.; DLC MANAGEMENT CORP.; JONES LANG
LASALLE AMERICAS, INC.; RADIANT PARTNERS, LLC; TURNBERRY
ASSOCIATES LTD; REGENCY CENTERS, LP; SHOPCORE PROPERTIES, INC.;
SITE CENTERS CORP.; AND QIC PROPERTIES US, INC. TO CONFIRMATION
OF THE DEBTORS' AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION**

Brookfield Properties Retail, Inc.; DLC Management Corp.; Jones Lang LaSalle Americas, Inc.; QIC Properties US, Inc.; Radiant Partners, LLC; Regency Centers, LP; Shopcore Properties, Inc.; SITE Centers Corp.; and Turnberry Associates Ltd. (collectively, the “Landlords”) submit this objection (the “Objection”) to the Debtors’ *Amended Joint Chapter 11 Plan of Reorganization of J.C. Penney Company, Inc. and Its Debtor Affiliates* (the “Plan”). In support of the Objection, the Landlords respectfully state as follows:

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://cases.primeclerk.com/JCPenney>. The location of Debtor J. C. Penney Company, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 6501 Legacy Drive, Plano, Texas 75024.

² Objection deadline extended by agreement.

PRELIMINARY STATEMENT

1. The Landlords fully support the Debtors reorganization that will provide for a healthier, go-forward company emerging from bankruptcy, but object to the terms of the proposed Plan to the extent that it is inconsistent with the Sale Order.

2. The Landlords will continue to work with the Debtors prior to the confirmation hearing to attempt to address the Plan defects.

BACKGROUND

3. The Landlords are the owners, affiliates, or managing agents for the owners of properties and are parties to non-residential real estate written leases (each, a “Lease,” and, collectively, the “Leases”) for the locations across the United States as shown on Exhibit A (collectively, the “Leased Premises”). Most or all of the Leased Premises are located in shopping centers as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d. 1081 (3d Cir. 1990).

4. On May 16, 2020 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with this Court.

5. On November 8, 2020, the Debtors filed the plan.³ On November 20, 2020, the Debtors filed their *Revised Plan* (the “Plan”).⁴

6. On November 9, 2020, the Court entered an order (the “Sale Order”),⁵ authorizing the Debtors to enter into and perform under the asset purchase agreement (the “APA”) ⁶ with the OpCo and PropCo Purchasers (as such capitalized terms are defined in the Sale Order) .

³ Docket No. 1666.

⁴ Docket No. 1973-1.

7. The Sale Order contains assignment procedures (the “Assignment Procedures”). As part of the Assignment Procedures, the PropCo Purchaser will be assigned certain unexpired Leases pursuant to the Plan. The Assignment Procedures and Sale Order also provides that objections to any Cure Cost or adequate assurance of future performance must be filed by November 18, 2020. On November 18, 2020, the Landlords filed their objection to the Cure Cost and the ability of the Debtors, OpCo Purchaser, or PropCo Purchaser to provide adequate assurance of future performance (“Cure Objection”) [Docket No. 1914].

8. The Plan refers to several provisions of the Sale Order, and is largely consistent, save for a few key provisions. The Sale Order provides that, subject to lease counterparties’ adequate assurance of future performance objection and other rights set forth in paragraph 10, that:⁷

the Debtors, the Wind-Down Debtors, OpCo Purchaser, or PropCo Purchaser (as applicable in accordance with the Asset Purchase Agreement) shall be liable for: (a) amounts owed under the assumed and assigned unexpired lease of nonresidential real property that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (b) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned unexpired lease of nonresidential real property that are not due or have not been determined as of the effective date of the assignment; (c) any percentage rent that may come due under the assumed and assigned unexpired lease of nonresidential real property; (d) indemnification obligations, if any, up to the effective date of the assignment; and (e) any unpaid Cure Costs under the assumed and assigned unexpired lease of nonresidential real property, calculated in accordance with the

⁵ Docket No. 1814.

⁶ Docket No. 1668-1.

⁷ Sale Order at ¶ 20.

terms of any applicable amendment to such unexpired lease of nonresidential real property.

9. The Plan, however, removes the language referencing the lease counterparties' adequate assurance objection in the Sale Order:⁸

Notwithstanding anything to the contrary in the Sale Order or the Plan, with respect to any assumed and assigned Unexpired Lease of nonresidential real property, the Debtors, the Wind-Down Debtors, the OpCo Purchaser, or the PropCo Purchaser (as applicable in accordance with the Asset Purchase Agreement) shall remain liable for: (1) amounts owed under the assumed and assigned Unexpired Lease of nonresidential real property that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (2) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned Unexpired Lease of nonresidential real property that are not due or have not been determined as of the date of the effective date of the assignment; (3) any percentage rent that may come due under the assumed and assigned Unexpired Lease of nonresidential real property; (4) indemnification obligations, if any, up to the date of the effective date of the assignment; and (5) any unpaid Cure Costs under the assumed and assigned Unexpired Lease of nonresidential real property, each calculated in accordance with the terms of any applicable amendment to such Unexpired Lease of nonresidential real property.

10. The removal of the reference to paragraph 10 in the Sale Order in the Plan is problematic for the Landlords. First, the Plan and the Sale Order are not clear to whom the Landlords are supposed to bill the obligations listed in (1) – (5) in the preceding paragraph (collectively, the “Adjustment and Indemnification Obligations”). Without knowing who to bill the Adjustment and Indemnification Obligations to, the Debtors have not provided adequate assurance of future performance. The reservation in the Sale Order preserves the Landlords'

⁸ Plan at Article V. C. (emphasis added).

Cure Objection, including any issues relating to the Adjustment and Indemnification Obligations. As such, it should be included in the Plan or Confirmation Order.

OBJECTION

11. The absence of a reference to paragraph 10 of the Sale Order in Article V. C of the Plan could potentially be interpreted as eliminating the Landlords' reservation of rights contained in the Sale Order. The reservation of rights contained in paragraph 10 of the Sale Order is a bargained for and necessary provision, protecting the Landlords' rights with regards to the assumption and assignment of the Leases. Accordingly, the terms of the Plan conflict with the terms of the Sale Order. The Plan or the order confirming the Plan should be revised to include the reference and reservation of rights contained in paragraph 10 of the Sale Order.

12. More importantly, the language in Article V. C. should clarify which entity is responsible for Adjustment and Indemnification Obligations. The following revision to Article V. C. should resolve the Landlords concerns:

Notwithstanding anything to the contrary in the Sale Order or the Plan (including the releases set forth herein or in the Plan), and subject to any arrangement between the respective parties to the APA as to such liability, with respect to any assumed and assigned Unexpired Lease of nonresidential real property or any Restrictive Covenant, the OpCo Purchaser or the PropCo Purchaser, as applicable, shall be liable to the counterparty to such Unexpired Lease or Restrictive Covenant for the following: (1) amounts owed under any assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are unbilled or not yet due as of the effective date of the assignment, regardless of when such amounts accrued, such as common area maintenance, insurance, taxes, and similar charges; (2) any regular or periodic adjustment or reconciliation of charges under the assumed and assigned Unexpired Lease of nonresidential real property or Restrictive Covenant that are not due or have not been determined as of the date of the effective date of the assignment; (3) any percentage rent that may come due under the assumed and assigned Unexpired Lease of nonresidential real property; (4) indemnification obligations, if any, up to the date of the effective date of the assignment; and (5) any unpaid Cure Costs under the assumed and assigned Unexpired Lease of nonresidential real property, each calculated in accordance with the terms of any applicable amendment to

such Unexpired Lease of nonresidential real property. Nothing in this Plan shall impair the right of a counterparty to an Executory Contract or Unexpired Lease to assert a claim for rejection damages in accordance with section 365 of the Bankruptcy Code, or receive an allowed General Unsecured Claim on account of such rejection damages, and nothing in this Plan or the Confirmation Order shall impair the right of a counterparty to an Unexpired Lease of nonresidential real property to object to the assumption and assignment of such Unexpired Lease on grounds of inadequate assurance of future performance.

OPT-OUT

13. The Landlords object, do not consent, and opt out of the release and other non-consensual provisions of Article X of the Plan.

JOINDER IN OBJECTIONS OF OTHER LANDLORDS

14. To the extent not inconsistent with this Objection, the Landlords join in the objections to the Plan asserted by other landlords and contract counterparties.

RESERVATION OF RIGHTS

15. The Landlords reserve the right to amend and/or supplement this Objection on any basis, including, without limitation, by adding and supplementing objections to the Debtors' proposed cure amounts and by adding or supplementing objections to the adequate assurance of future performance provided by any proposed assignee.

CONCLUSION

WHEREFORE, the Landlords respectfully request that the Court enter an order (i) denying confirmation of the Plan unless modified as set forth herein; and (ii) granting such other and further relief as the Court deems just and proper.

KELLEY DRYE & WARREN LLP

By: /s/ Sean T. Wilson
Sean T. Wilson

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CERTIFICATE OF SERVICE

I hereby certify that on this November 23, 2020, a copy of the foregoing Objection was served via CM/ECF on all parties registered to receive such notice in the above-captioned cases.

/s/ Sean T. Wilson

Sean T. Wilson

EXHIBIT A

| Jones Lang LaSalle Americas, Inc. | |
|--|-----------------|
| Mall Name | Location |
| Mall des las Aquilas | Eagle Pass, TX |

| DLC Management Corp. | |
|-----------------------------|-------------------------|
| Mall Name | Location |
| Freedom Plaza | Erie Blvd. W., Rome, NY |
| Torrington Plaza | Torrington, CT |

| QIC Properties US, Inc. | |
|--------------------------------|-------------------|
| Mall Name | Location |
| Antelope Mall | Palmdale, CA |
| Northfield at Stapleton | Denver, CO |
| The Mall at Robinson | Pittsburgh, PA |
| Shops at Tanforan | San Bruno, CA |
| Shops at Wiregrass | Wesley Chapel, FL |

| Radiant Partners, LLC | |
|------------------------------|-----------------|
| Mall Name | Location |
| Alexandria Shopping Center | Alexandria, LA |
| Mall of Abilene | Abilene, TX |
| Santa Rosa | Mary Ester, FL |

| Turnberry Associates Ltd. | |
|----------------------------------|-----------------|
| Mall Name | Location |
| Aventura Mall | North Miami, FL |

| Shopcore Properties, Inc. | |
|----------------------------------|-----------------|
| Mall Name | Location |
| Plaza at Rockwall | Rockwall, TX |
| Alamo Ranch | San Antonio, TX |
| South Park Meadows | Austin, TX |

| Site Centers Corp. | |
|---------------------------|-----------------|
| Mall Name | Location |
| White Oak Village | Richmond, VA |
| Plaza del Norte | Hatillo, PR |
| Riverdale Village | Coon Rapids, MN |

| Brookfield Properties Retail Inc. | |
|--|-----------------------|
| Mall Name | Location |
| Alderwood Mall | Lynnwood, WA |
| Altamonte Mall | Altamonte Springs, FL |
| Animas Valley Mall | Farmington, NM |
| Apache Mall | Rochester, MN |
| Augusta Mall | Augusta, GA |
| Baybrook Mall | Friendswood, TX |
| Bellis Fair | Bellingham, WA |
| Birchwood Mall | Port Huron, MI |
| Boise Towne Square | Boise, ID |
| Brass Mill Center | Waterbury, CT |
| Carolina Place | Pineville, NC |
| Chesterfield Towne Center | Richmond, VA |
| Christiana Mall | Newark, DE |
| Chula Vista Center | Chula Vista, CA |
| Clackamas Town Center | Happy Valley, OR |
| Coastland Center | Naples, FL |
| Columbia Mall MO | Columbia, MO |
| Columbiana Centre | Columbia, SC |
| Coral Ridge Mall | Coralville, IA |
| Coronado Center | Albuquerque, NM |
| Crossroads Center MN | St. Cloud, MN |
| Deerbrook Mall | Humble, TX |
| Eastridge Mall WY | Casper, Wyoming |
| First Colony Mall | Sugar Land, TX |
| Florence Mall | Florence, KY |
| Four Seasons Town Centre | Greensboro, NC |
| Fox River Mall | Appleton, WI |
| Galleria at Sunset | Henderson, NV |
| Galleria at Tyler | Riverside, CA |
| Glenbrook Square | Ft. Wayne, IN |
| Glendale Galleria | Glendale, CA |

| Mall Name | Location |
|------------------------------|-------------------------|
| Governors Square | Tallahassee, Florida |
| Grand Teton Mall | Idaho Falls, ID |
| Grand Traverse Mall | Traverse City, MI |
| Greenville Mall | Greenville, NC |
| Greenwood Mall | Bowling Green, KY |
| Independence Mall | Wilmington, NC |
| Lakeland Square Mall | Lakeland, FL |
| Lansing Mall | Lansing, MI |
| Lynnhaven Mall | Virginia Beach, VA |
| Mall of Louisiana | Baton Rouge, LA |
| Mall St Matthews | Louisville, KY |
| Market Place Shopping Center | Bakersfield, CA |
| Meadows Mall | Las Vegas, NV |
| Monmouth Mall | Eatontown, NJ |
| Mt. Shasta Mall | Redding, CA |
| North Plains Mall | Clovis, NM |
| North Point Mall | Alpharetta, GA |
| North Star Mall | Chicago, IL |
| Northridge Fashion Center | Northridge, CA |
| NorthTown Mall | Spokane, WA |
| Oakwood Center LA | Gretna, LA |
| Oakwood Mall WI | Eau Claire, WI |
| Oglethorpe Mall | Savannah, GA |
| Park City Center | Lancaster, PA |
| Park Meadows | Lone Tree, CO |
| Peachtree Mall | Columbus, GA |
| Pecanland Mall | Monroe, LA |
| Pembroke Lakes Mall | Pembroke Lakes, FL |
| Pierre Bossier Mall | Bossier City, LA |
| Pinnacle Hills Promenade | Rogers, AZ |
| Promenade Temecula | Temecula, CA |
| Quail Springs Mall | Oklahoma City, Oklahoma |
| Ridgedale Center | Minnetonka, MN |
| River Hills Mall | Mankato, MN |
| Riverchase Galleria | Hoover, AL |
| Rivertown Crossings | Chicago, IL |
| Sikes Senter | Wichita Falls, TX |
| Silver Lake Mall | Taunton, MA |
| Sooner Mall | Norman, OK |

| Mall Name | Location |
|-------------------------------|-----------------------|
| Southland Center MI | Taylor, MI |
| Southland Mall CA | Hayward, CA |
| Southwest Plaza | Littleton, CO |
| Spokane Valley Mall | Spokane, WA |
| Staten Island Mall Phase II | Staten Island, NY |
| Stonebriar Centre | Frisco, TX |
| The Crossroads MI | Portage, MI |
| The Maine Mall | Portage, MI |
| The Mall at Barnes Crossing | South Portland, ME |
| The Mall At Turtle Creek | Jonesboro, AR |
| The Mall in Columbia | Columbia, MD |
| The Oaks Mall | Gainesville, FL |
| The Parks Mall at Arlington | Arlington, TX |
| The Shoppes at Bel Air | Mobile, AL |
| The Shoppes at Buckland Hills | Manchester, CT |
| The Shoppes at Carlsbad | Carlsbad, CA |
| The Streets at Southpoint | Durham, NC |
| The Woodlands Mall | Woodlands, TX |
| Town East Mall | Towson, MD |
| Tucson Mall | Tucson, AZ |
| Valley Hills Mall | Hickory, NC |
| Valley Plaza Mall CA | Bakersfield, CA |
| Victoria Gardens | Rancho Cucamonga, CA. |
| Visalia Mall | Visalia, CA |
| West Valley Mall | Tracy, CA |
| Westroads Mall | Omaha, Nebraska |
| Westwood Mall | Jackson, MI |
| White Marsh Mall | Baltimore, MD |
| Willowbrook Mall TX | Houston, TX |
| Woodbridge Center | Woodbridge, NJ |